

**INDIVIDUAL PRACTICE RULES OF  
MAGISTRATE JUDGE JAMES ORENSTEIN  
225 Cadman Plaza East  
Brooklyn, New York 11201  
Chambers: Room 456 North  
Telephone: (718) 613-2110 Fax: (718) 613-2115  
Email: [j\\_orenstein\\_chamber@nyed.uscourts.gov](mailto:j_orenstein_chamber@nyed.uscourts.gov)  
Courtroom Deputy Alicia Guy: (718) 613-2114**

**I. Electronic Case Filing (ECF)**

A. General ECF Requirement; Exemptions.

1. Regardless of the district judge assigned, **all documents** directed to Magistrate Judge Orenstein **must** be filed electronically via the court's Electronic Filing System pursuant to Administrative Order 2004-08. ECF procedures are available from the district court's web site [<http://www.nyed.uscourts.gov>](http://www.nyed.uscourts.gov). Questions regarding ECF filing or training should be directed to Cinthia Mahon in Central Islip at (631) 712-6011, or Terry Vaughn in Brooklyn at (718) 260-2330.
2. Regardless of the district judge assigned, in all cases assigned to Magistrate Judge Orenstein, attorneys must make an appearance and register to receive ECF notifications prior to filing any motions, letters, or other documents with the Court.
3. *Exemptions.* Litigants proceeding *pro se* are exempt from ECF requirements. Other requests to be exempt from ECF requirements may be made in writing to Magistrate Judge Orenstein. Requests for exemptions to the ECF requirements will only be considered after the attorney seeking the request has completed ECF training. Such requests will be granted only in limited circumstances.

B. Hard Copies.

1. *Generally.* Do **not** submit hard copies of documents filed by ECF. The court will determine whether the submission of courtesy hard copies would be useful, and, if so, will advise counsel of the argument date.
2. *Exception for time-sensitive submissions.* **After filing by ECF, a copy of time-sensitive submissions, such as requests for adjournments, must be faxed to Chambers at (718) 613-2115, subject to the rules set forth below in paragraph II.D.**

3. *Exception for filings containing non-text exhibits.* Parties filing non-text exhibits or materials in excess of 50 pages shall submit a courtesy copy of the entire filing.
4. *Notifications and orders by the court.* Attorneys will receive notifications from the court electronically. Hard copies will **not** be mailed to attorneys registered for ECF. Accordingly, attorneys are responsible for keeping their e-mail addresses current with the Clerk's Office. Attorneys are also responsible for ensuring that they are registered with the Clerk's Office to receive email notifications in every matter before Magistrate Judge Orenstein.

## II. Communications With Chambers

- A. Requests for adjournments or extensions of time. All requests for adjournment of a court appearance, absent an emergency, shall be made **at least 48 hours prior to the scheduled appearance**. Further, all requests for adjournments or extensions of time must state: (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether those previous requests were granted or denied, and (4) whether the adversary consents (including any reasons given by the adversary for withholding consent). If the requested adjournment or extension affects any other scheduled date, a proposed Revised Scheduling Order must be submitted.
- B. Letters. **All** letters sent to the Court are to be filed via ECF (see rule 1.B.2 above regarding time-sensitive letters), with copies simultaneously delivered to all parties, and with service on all parties indicated on the face of the letter. Copies of correspondence between counsel shall not be filed or sent to the Court.
- C. Telephone calls. Telephone calls to chambers are permitted. All questions regarding scheduling in civil matters or any aspect of a criminal matter should be directed to Alicia Guy (718) 613-2114. Other questions should be directed to the main chambers number, (718) 613-2110. Attorneys should review the ECF docket prior to contacting chambers with questions regarding the scheduling of conferences.
- D. Faxes. Faxes not exceeding four pages, including cover sheet and attachments, are permitted without prior authorization. Longer faxes require permission. Papers faxed to chambers must also be faxed to all other parties. **All documents sent by fax must comply with Rule 1.B.2 above and be filed via ECF prior to being sent. Do not also mail copies of papers that are faxed to chambers; the faxed copy is sufficient.**

- E. Email: Parties may not submit documents to the Court via email, unless instructed to do so by the Court. All documents being submitted to the court should be filed through ECF.

### III. Motions

A. Discovery or other non-dispositive motions.

1. *Letter motions.* Discovery or other non-dispositive motions may be made by letter motion, pursuant to Local Civil Rules 37.1 and 37.3. No pre-motion conference is required. A response must be served and filed within three business days of receipt of the letter motion. Replies are not permitted. Pursuant to Local Civil Rule 26.5, parties must make a good-faith effort to resolve disputes, including in-person contact either by telephone or in person, **before** making a motion, and must report the results of that effort in submitting a motion pursuant to this rule.
2. *Motions on notice.* Although parties are encouraged to make discovery and other non-dispositive motions by letter pursuant to Local Rule 37.3, such motions may be made on notice pursuant to Local Rule 6.1. A pre-motion conference with the court is required before the filing of a motion on notice. The moving party shall submit a letter setting forth the basis for the motion; a response shall be submitted within three business days. Replies are not permitted.
3. *Length of letters.* All letters submitted pursuant to this rule shall be no longer than three pages in length, exclusive of attachments.

B. Dispositive motions. Dispositive motions, such as motions to dismiss and motions for summary judgment, must be made to the presiding district court judge, in conformance with his or her individual rules, unless the parties have consented to refer the case to Magistrate Judge Orenstein for all purposes.

C. General practices for motions on notice made to Magistrate Judge Orenstein.

1. *Service and filing.*
  - a. No motion papers shall be filed until the motion has been fully briefed.
  - b. The parties are to set their own briefing schedule. The parties may revise the schedule on consent, informing chambers by letter.

- c. The original moving party shall be responsible for filing all motion papers. Such party shall also file a letter specifying each document filed in the motion package.
2. *Memoranda of law.* Unless prior permission has been granted, memoranda of law in support of and in opposition to motions on notice are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents. Case citations must contain pinpoint cites. All memoranda of law must use one-inch margins, double spacing, and 12-point font. Legal arguments must be set forth in a memorandum of law; affidavits or affirmations containing legal argument will be rejected. See Local Civil Rule 7.1. **Any memoranda, affidavits, or affirmations not complying with the requirements set forth herein will be rejected.**
3. *Courtesy copies.* After electronic filing, one hard copy of the motion papers, marked as “Courtesy Copy,” should be submitted to Magistrate Judge Orenstein. Courtesy copies of dispositive motions made to the district judge should **not** be provided to the magistrate judge.
4. *Oral argument on motions.* Parties may request oral argument. The court will determine whether argument will be heard, and, if so, will advise counsel of the argument date.

D. Summary judgment motions submitted to Magistrate Judge Orenstein.

1. *Statements pursuant to Local Civil Rule 56.1.* Any party wishing to make a motion for summary judgment must first serve upon all parties a statement pursuant to Local Civil Rule 56.1 (“Rule 56.1”), **as amended on March 26, 2004**. If the non-movant is proceeding *pro se*, the movant must also comply with Local Civil Rule 56.2. Any party receiving a Rule 56.1 statement and wishing to oppose the motion must serve on the movant, within seven days of receiving the movant’s Rule 56.1 statement, an original and two copies of a counter-statement pursuant to Rule 56.1, **as amended on March 26, 2004**. The parties may agree among themselves to a reasonable extension of time for the non-movant to prepare a Rule 56.1 counter-statement. The Rule 56.1 statement and counter-statement should **not** be filed with the court prior to the request for a pre-motion conference.
2. *Pre-motion conference.* Should the movant still assert that summary judgment is warranted after receiving the counter-statement, the movant may request a pre-motion conference in a letter of no more than two pages

stating the basis for the proposed motion. The letter shall also enclose copies of the Rule 56.1 statement and counter-statement. Within seven days, the non-movant may submit a responsive letter of no more than two pages, setting forth the nature of the opposition to the motion.

- E. Motions for admission *pro hac vice*. A motion for admission *pro hac vice*, together with a proposed order admitting the attorney *pro hac vice*, shall be served and filed at least seven days prior to the return date designated in the notice of motion. Although there is no need to file a memorandum of law, this motion must comply with the Rules of the Eastern District of New York for admission *pro hac vice*. These motions shall be on submission. If any party objects to the motion, opposition papers must be served and filed at least two days prior to the return date. No reply papers are permitted.
- F. Motions pursuant to Fed. R. App. P. 4(a)(4)(A). Nothing in these individual rules should be construed to require a pre-motion conference for motions pursuant to Federal Rule of Appellate Procedure 4(a)(4)(A), and such motion should be filed when made.

#### **IV. Pretrial Procedures in Civil Trials Referred To Magistrate Judge Orenstein**

- A. Joint pretrial orders. In cases referred for trial before Magistrate Judge Orenstein in which a pretrial order has already been filed pursuant to the individual practice rules of another judge, no additional filing is required under this rule. In cases where no pretrial order was filed prior to the referral to Magistrate Judge Orenstein, the parties shall, on the date specified in the scheduling order, submit a joint pretrial order that includes the following:
  - 1. The full caption of the action;
  - 2. The names (including firm names), addresses, and telephone and fax numbers of trial counsel;
  - 3. A brief statement by plaintiff as to the basis of subject matter jurisdiction, and a brief statement by each other party as to the presence or absence of subject matter jurisdiction. Such statements shall cite relevant statutes and facts regarding citizenship and jurisdictional amounts.
  - 4. A brief summary by each party of the claims and defenses that party has asserted that remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. Such summaries shall identify all claims and defense previously asserted that are not to be tried.

5. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed.
- B. Filings prior to trial. Unless otherwise ordered by the Court, each party shall file the following according to the schedule indicated below:
1. 15 days before trial:
    - a. Proposed *voir dire* questions.
    - b. Requests to charge, limited to the elements of the claims, the damages sought and defenses. General instructions will be prepared by the court. When feasible, proposed jury charges should also be submitted on a 3.5" diskette in Word Perfect or Word format.
    - c. In non-jury cases, a statement of the elements of each claim or defense involving such party, together with a summary of the facts relied upon to establish each element.
    - d. Motions *in limine*.
    - e. In any case where such party believes it would be useful, a pretrial memorandum.
  2. 3 business days before trial:
    - a. Any stipulations or agreed statements of fact or law that have been agreed to by all parties.
    - b. A list by each party as to the fact and expert witnesses whose testimony is to be offered in its case in chief, indicating whether such witnesses will testify in person or by deposition. Only listed witnesses will be permitted to testify except when good cause is shown.
    - c. A designation by each party of the deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party. Designations should be specific as to transcript pages and lines. Deposition testimony not so specified in advance of trial will be excluded.

- d. A list by each party of exhibits to be offered in its case in chief, preferably in the following format. To the extent practicable, counsel should identify (by reference to the pertinent Federal Rule of Evidence) any anticipated objections to an opposing party's exhibits. Any objection not so identified will be deemed waived absent good cause. When feasible, the exhibit lists should also be submitted on a 3.5" diskette in Word Perfect or Word format.

Preferred format for exhibit list:

Ex. #	Description	Offered	Objection	Admitted

3 Start of trial:

- a. A complete set of pre-marked trial exhibits.
- b. A joint list of the names of all witnesses or persons about whom testimony is expected, to be provided to prospective jurors during *voir dire*.

C. Procedures at trial:

1. Voir dire: The court will conduct all *voir dire*.
2. Witnesses:
  - a. No later than the end of each trial day, counsel must notify each other and the court of witnesses to be called the following trial day.
  - b. Absent a contrary ruling made before the start of a witness's direct testimony, cross-examination in a civil case may go beyond the scope of direct to avoid making the witness return to testify in the opposing party's case. However, to the extent cross-examination exceeds the scope of the direct pursuant to this rule, counsel should not ask leading questions (unless the witness is hostile or otherwise associated with the opposing party).
3. Sidebars: Sidebar conferences will be kept to a minimum. Counsel are expected to anticipate and raise evidentiary issues during breaks in the trial to avoid wasting the jurors' time.

4. Closing arguments:

- a. Closing arguments will start with the defendant and conclude with the plaintiff. There will be no rebuttal. *See* Local Rule 39.2.
- b. Any application for a different order of argument must be made before jury selection.

Revised as of June 20, 2006